UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PAULA A. FLOWERS, Commissioner of Commerce and Insurance for the State of Tennessee, as Liquidator for Doctors Insurance Reciprocal, Risk Retention Group, American National Lawyers Insurance Reciprocal, Risk Retention Group, and The Reciprocal Alliance, Risk Retention Group,	§	
Plaintiff,	§	
v.	§	**Case No. _____________**
GENERAL REINSURANCE CORPORATION, a Delaware corporation; JOHN WILLIAM "BILL" CREWS; MILLIMAN USA, INC., a Washington corporation; PRICE WATERHOUSECOOPERS LLP, a Delaware limited liability partnership; WACHOVIA BANK, NATIONAL ASSOCIATION (f/k/a FIRST UNION NATIONAL BANK), a Virginia corporation; CREWS & HANCOCK, P.L.C., a Virginia limited liability company; ATLANTIC SECURITY, LTD., a Bermuda corporation; KENNETH R. PATTERSON; CAROLYN B. HUDGINS; JUDITH A. KELLEY; THOMAS M. REINDEL; VICTORIA J. SEEGER; CHRISTOPHER MIGEL; THOMAS N. KELLOGG; ROBERT L. SANDERS; GARY STEPHANI; RICHARD W. E. "DICKY" BLAND; GORDON D. MCLEAN; RICHARD WITKOWSKI,	§	**JURY DEMAND**
Defendants.	§	

COMPLAINT

JURISDICTION

1. This Court has original jurisdiction pursuant to:

a. 28 U.S.C. § 1332, in that the parties in this matter are citizens of different states and the controversy in this matter exceeds $75,000.00;

b. The Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C., § 1965 and 28 U.S.C. § 1331;

c. 28 U.S.C. § 1367, giving this Court supplemental jurisdiction; and

d. 28 U.S.C. § 1407, giving this Court additional jurisdiction under the multidistrict litigation statutory scheme.

PARTIES

2. This action is brought by the Plaintiff, Paula A. Flowers, Commissioner of Commerce and Insurance for the State of Tennessee, as Liquidator for Doctors Insurance Reciprocal, Risk Retention Group ("DIR"), American National Lawyers Insurance Reciprocal, Risk Retention Group ("ANLIR"), and The Reciprocal Alliance, Risk Retention Group ("TRA") (collectively, the "RRGs"), all three companies in liquidation pursuant to Tennessee Code Annotated **§**§ 56-9-307, *et. seq*. The RRGs are all Risk Retention Groups organized under the auspices of the federal Liability Risk Retention Act of 1986 and subsequent amendments, 15 U.S.C. § 3901 *et seq.*, and are duly licensed and domiciled under the laws of the State of Tennessee. Paula A. Flowers, as Commissioner of Commerce and Insurance for the State of Tennessee, brings this action in her capacity as Liquidator for DIR, ANLIR, and TRA.

3. Defendant General Reinsurance Corporation , also d/b/a "General Re," "GeneralCologne Reinsurance," and "GeneralCologne Re" (hereinafter "Gen Re"), is a corporation organized and existing under the laws of the state of Delaware and doing business in the State of Tennessee. Gen Re is liable for the actions of its executives, officers, directors, employees and agents under the doctrines of agency, respondeat superior and/or other doctrines.

4. Defendant Thomas M. Reindel was at all times relevant a Vice President of Gen Re.

5. Defendant Tom N. Kellogg was at all times relevant a Vice President of Gen Re.

6. Defendant Victoria J. Seeger *(*f/k/a Victoria J. Wixtead) was at all times relevant a Vice President of Gen Re.

7. Defendant Christopher J. Migel was at all times relevant an Executive Vice President of Gen Re.

8. Defendant Milliman USA, Inc. ("Milliman") (f/k/a Milliman & Robinson) is a corporation organized and existing under the laws of the State of Washington and doing business in Tennessee. Milliman is liable for the actions and omissions of Sanders and its other employees and agents under the doctrines of agency, respondeat superior and/or other doctrines.

9. Defendant Robert L. Sanders was at all times relevant a principal of Milliman.

10. Defendant PricewaterhouseCoopers LLP ("PwC") is a limited liability partnership organized and existing under the laws of the State of Delaware and doing business in Tennessee. PwC is liable for the actions and omissions of Defendant Gary Stephani and its other employees and agents under the doctrines of agency, respondeat superior and/or other doctrines.

11. Defendant Gary Stephani ("Stephani") was at all times relevant a partner with PwC and was responsible for audits of Reciprocal of American and the RRGs.

12. Defendant Wachovia Bank, National Association ("Wachovia") (f/k/a First Union National Bank) is a corporation organized and existing under the laws of the Commonwealth of Virginia and doing business in Tennessee. Wachovia is liable for the actions and omissions of its employees and agents under the doctrines of agency, respondeat superior and/or other doctrines.

13. Defendant Crews & Hancock, P.L.C. ("Crews & Hancock") was at all times relevant a limited liability company organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in Richmond, Virginia. At all relevant times, Crews & Hancock served as general counsel to Reciprocal of American ("ROA"), The Reciprocal Group ("TRG"), DIR, ANLIR, TRA, and First Virginia Re ("FVR"). Crews & Hancock is liable for the actions and omissions of its members, employees, and agents under the doctrines of agency, respondeat superior and/or other doctrines.

14. Defendant John William "Bill" Crews was at all times relevant an officer and/or director of ROA, TRG, and FVR. He was also Senior Vice President and Assistant Secretary for ANLIR, and Executive Vice President for ANLIR's attorney-in-fact.[1] He was Executive President of DIR's attorney-in-fact. He was Executive Vice President of TRA's attorney-in-fact. He also served as General Counsel to all of these entities. He was a member of Defendant Crews & Hancock.

15. Defendant Richard W. E. "Dicky" Bland was at all times relevant a member with Crews & Hancock. At certain relevant times, Bland was also an officer of ROA and of the attorneys-in-fact for each of the RRGs. Bland was also Vice President of the attorneys-in-fact for ANLIR and TRA. He was Assistant Secretary of the attorney-in-fact of DIR.

16. Defendant Atlantic Security, Ltd. ("Atlantic Security") is a corporation organized and existing under the laws of Bermuda and, on information and belief, has its principal place of business in Hamilton, Bermuda. Atlantic Security is liable for the actions and omissions of

[1] As set forth below, reciprocals are required by law to have an attorney-in-fact. Accordingly there also existed three corporations each holding a general power of attorney from one of the RRGs. All of the officers of the attorneys-in-fact were from either the "Management Defendants" or the "Officer and Director Defendants," as hereinafter defined.

Witkowski and its other employees and agents under the doctrines of agency, respondeat superior and/or other doctrines. Atlantic Security was the managing agent for FVR.

17. Defendant Richard Witkowski is a resident of Bermuda and, on information and belief, was at all times relevant a principal or employee of Atlantic Security.

18. Defendant Gordon D. McLean, was a member of the Boards of Directors of both TRG and ROA from 1990 to 1994. McLean was President of ROA from 1991 to 1994 and President of TRG from 1990 to 1995. On information and belief, at all times relevant after 1995, McLean was "President Emeritus" of ROA and participated informally in the management of the Companies.

19. Defendant Kenneth R. Patterson was at all times relevant an officer of ROA, TRG, FVR, DIR, ANLIR, and TRA. Patterson was President and Chief Executive Officer of ROA, President and Chief Executive Officer of TRG, President and Chief Executive Officer of FVR, Chief Executive Officer and Executive Vice Chairman of DIR, Senior Vice President and Chief Financial Officer of ANLIR, President and Chief Executive Officer of TRA, Senior Executive Vice President and CFO of the attorneys-in-fact for DIR and ANLIR, and Executive Vice Chairman of the attorney-in-fact for TRA. Patterson was also a Certified Public Accountant.

20. Defendant Carolyn B. Hudgins was at all times relevant an officer of ROA, and TRG. She was Vice President for Financial Services of ANLIR, Executive Vice President for ANLIR's attorney-in-fact, Executive Vice President for DIR's attorney-in-fact, Senior Vice President of TRA, and Executive Vice President of TRA's attorney-in-fact. On information and belief, at certain relevant times Hudgins was also an officer of FVR. Hudgins was also a Certified Public Accountant.

21. Defendant Judith A. Kelley was at all times relevant an officer of ROA, TRG, and FVR. She was Senior Vice President and Chief Operating Officer of ANLIR, President and Chief Executive Officer of ANLIR's attorney-in-fact, President and Chief Executive Officer of DIR, President and CEO of DIR's attorney-in-fact, Executive Vice President of TRA, and Executive Vice President of TRA's attorney-in-fact. Defendant Kelley was also a Chartered Property & Casualty Underwriter, Society of Chartered Property & Casualty Underwriter.

22. Collectively, Defendants Patterson, Crews, Hudgins, McLean, and Kelley may be referred to herein as the "Management Defendants."

23. Collectively, Defendants Patterson, Crews, Hudgins, Kelley, and Bland may be referred to herein as the "Director and Officer Defendants."

24. Collectively, Defendants Patterson, Crews, Hudgins, Kelley, Bland, Kellogg, Seeger, Migel, Reindel, Sanders, McLean, Witkowski, Gen Re, Milliman, Crews & Hancock, and Atlantic Security may be referred to herein as the "RICO Defendants."

FACTS

I. THE HISTORY OF THE ENTITIES AND THEIR RELATIONSHIP

25. Reciprocal of America ("ROA") is a Virginia unincorporated association and reciprocal insurer. The Reciprocal Group ("TRG") is a Virginia non-stock corporation. TRG ostensibly served as the management company and attorney-in-fact for ROA. On January 29, 2003, the Circuit Court of the City of Richmond, Virginia, found that "ROA and TRG, as attorney-in-fact for ROA, operate as, and comprise, a single insurance business enterprise." As used in this Complaint "ROA/TRG" refers to the combined single business enterprise.

26. ROA was formed in 1977 as Virginia Hospital Insurance Reciprocal. Over the years, ROA underwent two name changes, becoming known as Reciprocal of America in 2001.

ROA initially provided insurance only to hospitals. Later, ROA also began to insure physicians and lawyers and provide reinsurance coverage to DIR, ANLIR, and TRA. Defendant Crews was instrumental in the creation and management of ROA from inception.

27. First Virginia Reinsurance ("FVR") was incorporated in Bermuda in 1984. On information and belief, Crews was instrumental in the creation of FVR, which was to serve as a reinsurer of all of ROA's retained share of risk on the physician and lawyer malpractice insurance business. Upon information and belief, the initial purpose of FVR was to allow ROA's lawyer and physician insureds to defer the payment of federal income taxes. This had the further effect of limiting regulatory oversight of the various transactions entered into by the Defendants.

28. FVR was referred to by certain of the Defendants by the code name "Gen Re II" or "GR2."

29. On information and belief, FVR was originally owned 25% by ROA and 75% by certain Virginia hospitals and health care systems who were direct subscriber/insureds of ROA. In early 1989, the 75% owners of FVR purchased ROA's 25% minority interest. On information and belief, this transfer was engineered by Patterson, Crews, Hudgins, Kelley, Bland, and Crews & Hancock, who feared that Virginia insurance regulators might determine that ROA and FVR constituted an insurance holding company system, which would require adherence to additional rigorous regulations and subject the companies to additional regulatory scrutiny.

30. On information and belief, Patterson, Crews, Hudgins, Kelley, Bland, McLean, and Crews & Hancock devised a plan further to remove FVR from potential regulatory scrutiny. Pursuant to this plan, ROA's FVR-reinsured risk would be reinsured first by Gen Re and then be retroceded to FVR. ROA would then report, and would claim a reinsurance credit for, the reinsurance with Gen Re, and thereby be relieved of the requirement to report the reinsurance

with FVR, thus distancing it from the scrutiny of the regulators of ROA. On information and belief, this plan was implemented beginning in 1989, when Gen Re began to pass ROA risk, both direct and reinsurance, through to FVR pursuant to retrocession agreements between Gen Re and FVR (the "Gen Re-FVR Retrocession Agreements").

31. FVR and Gen Re were also parties to certain trust agreements for the purpose of holding assets in Bermuda financial institutions as security for the performance of FVR's obligations under the Gen Re-FVR Retrocession Agreements (the "FVR Bermuda Trusts").

32. On information and belief, the Management Defendants asked Gen Re to act as an intermediary between ROA and FVR. This was a condition to Gen Re's continuing to participate in the very profitable supposed reinsurance of ROA's business.

33. In 1989 or 1990, the board of Directors of ROA authorized the management of TRG to form Doctors Insurance Reciprocal, Risk Retention Group. DIR was to insure ROA's physician line of insurance business. Under the legal direction of Crews & Hancock, and under the control of Crews and Patterson, DIR was formed in 1990 and domiciled and licensed in Tennessee. After a period of transition, DIR began directly writing the insurance for the physician line of insurance business previously insured by ROA.

34. In 1992, the Board of Directors of TRG authorized the management of TRG to form American National Lawyers Insurance Reciprocal, Risk Retention Group. ANLIR was to insure ROA's lawyer line of insurance business. Under the legal direction of Crews & Hancock, and under the control of Crews and Patterson, ANLIR was formed in 1992 and was domiciled and licensed in Tennessee in 1993. After a period of transition, ANLIR began directly writing the insurance for the lawyer line of insurance business previously insured by ROA.

35. In 1995, the Board of Directors of TRG authorized the management of TRG to form The Reciprocal Alliance, Risk Retention Group. TRA was to insure health care providers in markets that ROA was unable to reach due to regulatory restrictions. Under the legal direction of Crews & Hancock, and under the control of Crews and Patterson, TRA was formed in 1995 and was domiciled and licensed in Tennessee.

36. By law, each of DIR, ANLIR, and TRA was required to have an attorney-in-fact to take all actions on behalf of its principal. Coincident with the formation of each RRG, and at the suggestion of Crews and Patterson, ROA's Board of Directors authorized the management of TRG to take the necessary steps to form a corporate attorney-in-fact for each RRG.

37. The attorneys-in-fact were formed by the management of TRG, with legal assistance from Crews & Hancock. DIR's attorney-in-fact was Physicians Management Corporation ("PMC"), a Tennessee non-profit corporation. ANLIR's attorney-in-fact was Lawyers Management Corporation ("LMC"), a Virginia non-stock corporation. TRA's attorney-in-fact was The Reciprocal Alliance Services Corporation ("TRASCO"), a Virginia non-stock corporation.

38. The structure of a reciprocal insurance company is that the attorney-in-fact acts on behalf of the reciprocal to perform the duties of management under the direction of the board of directors of the reciprocal company. In contrast, by the terms of the RRG governing instruments, which were prepared by Crews & Hancock, each of the RRGs was controlled by, rather than managed by, its attorney-in-fact. In addition, by the terms of their governing instruments, which coincidentally were prepared by Crews & Hancock, each of PMC, LMC, and TRASCO was controlled by TRG.

39. On or about January 26, 1990, DIR, PMC, and TRG executed a management and insurance services agreement pursuant to which TRG would serve as their exclusive management and insurance services company, and would provide the management and technical insurance and administrative services necessary for the operations of DIR and PMC.

40. On or about November 5, 1992, ANLIR, LMC, and TRG executed a management and insurance services agreement, effective upon the subsequent date when ANLIR was issued a license by the Tennessee Department of Commerce and Insurance (the "TDCI"). Pursuant to this agreement, TRG served as ANLIR's exclusive management and insurance services company, and would provide the management and technical insurance and administrative services necessary for the operations of ANLIR and LMC.

41. On or about September 8, 1995, TRA, TRASCO, and TRG executed a management and insurance services agreement, effective upon the subsequent date when TRA was issued a license by the TDCI. Pursuant to this agreement, TRG served as TRA's exclusive management and insurance services company and would provide the management and technical insurance and administrative services necessary for the operations of TRA and TRASCO.

42. TRG served as the management company for all of the RRGs and for ROA, performing all the duties and functions normally associated with the business of insurance for each of the three Reciprocals, including claims administration. TRG management operated ROA and the RRGs as a totally integrated enterprise. The attorneys-in-fact for the RRGs were mere shells, without offices, employees, or assets, and their functions were wholly delegated to, and controlled by, TRG.

43. TRG's control of the RRGs was further enabled by the structure of the RRGs, each of which was organized with two classes of directors, one class of which consisted of well-

known professionals whose images enhanced the likelihood that others would purchase insurance, but which actually had no directorial power, and the other class of directors which consisted of persons who are named herein as Defendants and who had substantially all the effective management power and authority for the RRGs.

44. TRG management controlled ROA and the RRGs through an interlocking network of common officers and directors. Despite their independent fiduciary duties to the RRGs and the inherent conflicts of interest presented, TRG management executed agreements between and among ROA and the RRGs without commercially reasonable terms and arms-length negotiation. Defendant Patterson and other Management Defendants signed reinsurance and other agreements on behalf of both the RRGs and ROA, their supposed reinsurer.

45. Through surplus "loans" and written agreements, ROA/TRG and their affiliates provided the RRGs with the capital they needed to do business. Under the terms of the management agreements, as long as these "loans" were outstanding, TRG could not be removed as the RRGs' management company, and TRG-approved directors could not be removed from the RRGs' Boards of Directors. TRG management admitted and argued to regulators that these surplus loans should be treated as capital investments in the RRGs, more like equity than debt. The so-called "loans" were unsecured, no payments were anticipated, and due dates were routinely continued for no consideration.

46. Between ninety and one hundred percent of the RRGs' insurance risks were transferred to ROA, effectively preventing the RRGs from ever operating independently or retaining sufficient premium dollars to pay off such surplus "loans" and remove TRG as their management company. Defendant Crews has admitted that the RRGs were not structured as freestanding independent reciprocals. In a letter dated June 4, 2002, to the Chairman of the

Board of Directors of ROA, Crews stated that the RRGs were structured “with the necessary ‘controls’ to insure that the interests of ROA/TRG would be fully recognized.”

47. When convenient, TRG management ignored the corporate form and separateness of ROA and the RRGs, and disregarded trust agreements designed to protect the RRGs and their insureds, by shifting funds between and among the various entities and their trust accounts.

48. The Management Defendants used the RRGs as mere tools to secure monetary benefits for ROA and for themselves individually, in the form of executive salaries and other benefits.

49. The Management Defendants knew that the basic survival of the RRGs depended on the continued survival of ROA. Indeed, the Management Defendants and Crews & Hancock created and fostered this dependence.

50. Due to the control that ROA/TRG exercised over the RRGs, and due to the fact that the interests of ROA/TRG were inextricably intertwined with the RRGs, allegations made on behalf of ROA/TRG in a related lawsuit, filed by Alfred W. Gross, the Commissioner of Insurance for Virginia, as Deputy Receiver for ROA/TRG, in the Federal District Court for the Eastern District of Virginia, Docket No. 3:03CV955 (which is currently the subject of a Conditional Transfer Order by the Panel on Multi-District Litigation), evidence and support damages suffered by each of the RRGs.

51. The acts of fraud, the conspiracies, the misrepresentations, and the acts of negligence that Commissioner Gross alleges in his action against the persons or entities named herein gave rise to damages suffered not only by ROA/TRG, but also by the RRGs. A significant portion of the monetary injury claimed by Commissioner Gross in his lawsuit directly

relates to ROA's inability to pay claims submitted and/or incurred by the RRGs and their policyholders.

52. In addition to damages that are tied to and evidenced by the allegations in Commissioner Gross's Complaint, the RRGs have separate and independent damages as described below.

53. The RRGs' reinsurance agreements with ROA included a quota share agreement wherein, until January 1, 2002, ROA "reinsured" approximately 90% of the RRGs' liabilities, with each RRG retaining responsibility for the remaining approximate 10% share of the first layer of the reinsurance agreements.

54. The actions and/or omissions alleged against the Defendants caused the insolvencies of each RRG and caused damages to each RRG equal to that portion of the RRGs pre-January 1, 2002, liabilities ceded to ROA, as well as a diminution of the ability of each RRG to provide assets to properly fund the liabilities retained by each RRG. These combined amounts are expected to range from tens of millions of dollars to hundreds of millions of dollars.

55. Moreover, the fraud, conspiracy, deceit, misrepresentations, and/or negligence committed by the Defendants, including but not limited to failures, whether intentional or negligent, to disclose material facts to the TDCI, caused the RRGs to continue in existence and to spiral deeper into insolvency. Each RRG, therefore, has been independently and separately damaged in the amount by which its insolvency deepened due to the culpable acts of the Defendants.

II. THE RECEIVERSHIPS

56. On or about January 29, 2003, the Circuit Court of Richmond County, Virginia, found that "ROA and TRG, as Attorney-in-Fact for ROA, operate as, and comprise, a single

insurance business enterprise," and placed the combined entity ROA/TRG into receivership under the control and direction of the Commonwealth of Virginia State Corporation Commission ("SCC").

57. On June 20, 2003, the SCC found that ROA/TRG was insolvent under Virginia law, and ordered that ROA/TRG be liquidated.

58. On or about January 31, 2003, in the Chancery Court of the State of Tennessee, Twentieth Judicial Circuit, Davidson County, three consent orders were entered appointing Paula A. Flowers, Commissioner of Commerce and Insurance for the State of Tennessee, as the Receiver for DIR, ANLIR, and TRA.

59. On June 3, 2003, the Davidson County Chancery Court entered three orders, each styled "Final Order of Liquidation; Finding of Insolvency; and Permanent Injunction" for DIR, ANLIR, and TRA. Pursuant to the Final Liquidation Orders, Commissioner Flowers is authorized and empowered, *inter alia*, as follows:

> o. The liquidator shall have the power to prosecute any action at law or in equity which may exist on the liquidator's behalf, and/or on behalf of the creditors, members, policyholders or shareholders of the insurer against any person or entity. Pursuant to Tenn. Code Ann. § 56-9-313(b)(1), the liquidator may, within two (2) years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the instant petition for liquidation.

III. THE ROLE OF OUTSIDE AUDITORS, OUTSIDE ACTUARIES AND GENERAL COUNSEL

60. Insurance regulators, including the Tennessee Department of Commerce and Insurance ("TDCI") and the Virginia SCC, rely on insurers and their internal and/or outside professionals to certify the fairness and accuracy of the financial statements filed by all insurers authorized to conduct insurance in their states.

61. As required by law, insurers rely on authorized management to prepare their required financial statements in conformity with statutory accounting practices ("SAP"). SAP differs from Generally Accepted Accounting Practices ("GAAP") in that SAP generally requires a more conservative accounting treatment for insurance companies than would be permitted for other types of business enterprises. Insurers rely on their certified public accountants to certify that financial statements represent the company's financial condition fairly and free from material misstatement and in conformity with SAP.

62. As required by law, insurers rely on their independent certified public accountants to file an audited financial report as a supplement to the annual statement. This report must include a reconciliation of differences, if any, between the audited statutory financial statements, and the annual statement filed with the domiciliary Commissioner, along with a written description of the nature of these differences.

63. An insurer's independent certified public accountants are required to conduct audits of the insurer's financial statements in accordance with generally accepted auditing standards ("GAAS"), governing *inter alia*, the auditor's qualifications, independence and professionalism, the planning and performance of the audit, and the resulting reports.

64. As further required by law, the independent certified public accountant must also give consideration to such other procedures described in the Financial Condition Examiner's Handbook promulgated by the NAIC as the auditor deems necessary.

65. Pursuant to Virginia law and Tennessee Reg & Rule Ch. 0780-1-65, an independent certified public accountant is required to report in writing within five business days to the board of directors or its audit committee any determination by the auditor that the insurer has materially misstated its financial condition as reported to regulatory authorities as of the

balance sheet date under examination, or that the insurer does not meet its minimum statutory capital and surplus requirements as of that date pursuant to applicable law. An insurer who has received such a report is required to forward a copy of report to the domiciliary Commissioner within five (5) business days of receipt of such report, and to provide the independent certified public accountant with evidence of the report being furnished to the domiciliary Commissioner. If this is not received, the independent certified public accountant is required to furnish to the domiciliary Commissioner a copy of its report within the next five (5) business days.

66. If an independent certified public accountant, subsequent to the date of an Audited Financial Report, becomes aware of facts that might have affected its report, the independent certified public accountant has the obligation to take such action as prescribed by the Professional Standards of the American Institute of Certified Public Accountants.

67. Insurers rely on their actuaries to verify that management's estimates of reserve liabilities for the payment of future claims are reasonable, by providing statements of actuarial opinion regarding the adequacy of loss reserves to the proper regulatory officials. Insurers also rely on their actuaries to ensure that management's reporting of reductions in liabilities due to reinsurance is reasonable.

68. Pursuant to the National Association of Insurance Commissioners ("NAIC") Property and Casualty Annual Statement Instructions:

> The insurer required to furnish an actuarial opinion shall require its appointed actuary to notify its Board of Directors or its audit committee in writing within five (5) business days after any determination by the appointed actuary that the opinion submitted to the domiciliary Commissioner was in error as a result of reliance on data or other information (other than assumptions) that, as of the balance sheet date, was factually incorrect. The opinion shall be considered to be in error if the opinion would not have been issued or would have been materially altered had the correct data or other information been used.

69. Insurers also may rely on legal counsel, whether internal or outside, to ensure that management complies with all applicable laws, including insurance laws regulating minimum capital and surplus, Risk Based Capital ("RBC") levels, reinsurance, required reports, and required regulatory approvals.

70. If financial statements filed and certified by management overstate the value of an insurer's assets (including reinsurance recoveries), or understate its liabilities (including reserves), the insurer's Total Adjusted Capital (and, therefore, surplus as regards policyholders and consequently its RBC percentage), will be misrepresented and overstated. Misrepresenting and overstating an insurer's Total Adjusted Capital, surplus as regards policyholders, and RBC level percentage, exposes policyholders, creditors, members, subscribers, stockholders, and/or the public to economic injury. An insurance company that appears to be, but is not, financially sound continues to attract new and renewing policyholders and continues amassing ever-greater liabilities. The financial condition of the insurer thus can continue to deteriorate, often until such time as the insurer's true financial condition can no longer sustain its operations. By that time, however, the insurer's true liabilities may far surpass its true admitted assets, or the insurer may no longer be able to pay its obligations as they become due in the usual course of business and the insurer may be insolvent.

IV. THE ROLE OF REGULATION OF REINSURANCE AND RETROCESSION

71. Reinsurance is a common arrangement whereby one insurance company (commonly called the assuming company or reinsurer), for consideration, agrees to indemnify another insurance company (the ceding company or reinsured) against all or part of a loss the latter may sustain under a policy or policies it has issued. Retrocession is a transaction whereby

a reinsurer, for consideration, cedes to another reinsurer all or part of its obligation to indemnify the original ceding company.

72. Reinsurance and retrocession can be, and usually are, legitimate methods for insurers to spread risk and limit an individual insurer's potential liability to policyholders. When the reinsurer assumes a substantial risk of loss, the ceding company may qualify for a "credit" against its outstanding loss reserves for the reinsurance on its financial statements. The reinsurance receivable under a qualified reinsurance agreement is an asset and reduces the ceding company's claim liabilities to a net liability which may result in an increase in its Total Adjusted Capital. An increase in Total Adjusted Capital can result in an increase in the RBC level percentage. As a result, an insurer therefore may be able to improve its financial rating, and the marketability of its policies, by reinsuring its policies with a well-respected and financially strong reinsurer.

73. The TDCI and the Virginia SCC are required by law to disallow any credit for reinsurance found to have been arranged for the purpose principally of deception or distortion of an insurer's financial condition, or contracts that do not meet other requirements for preferential treatment as reinsurance recoverable.

74. In some cases, complicated reinsurance treaties appear to transfer risk and merit a credit but, in fact, the transfer of risk is fraudulent or illusory. Reinsurance under which the assuming reinsurer bears no substantial insurance risk of net loss to itself is fraudulent and arranging such reinsurance for the purpose principally of deception or financial statement distortion is common law fraud, is a violation of the National Association of Insurance Commissioners' Statement of Statutory Accounting Practices 62 ("SSAP 62"), and is a violation of Tennessee statutory insurance reporting requirements.

75. Under Tennessee statutory reporting requirements, an insurer is required to disclose, in the annual statement filed with TDCI, whether the insurer has reinsured any risk with any other company under a reinsurance contract and must disclose any provision that would limit the reinsurer's losses below the stated percentage *(e.g.*, a deductible, a loss ratio corridor, a loss ratio cap, an aggregate limit, release, or any similar provision). Insurers are also required to disclose in the annual statement whether the insurer has released a reinsurer from liability, in whole or in part, for any loss that may occur on a reinsured risk.

76. Under Virginia law, no domestic reinsurer may enter into or modify a reinsurance treaty without prior written approval of the state regulatory authority if for any twelve-month period the reinsurance premium or anticipated change in the ceding insurer's liabilities equals or exceeds 50% of the insurer's surplus to policyholders as of the immediately preceding December 31. A domestic insurer must report all reinsurance and retrocession agreements to the applicable state authority.

V. REINSURANCE RELATIONSHIPS AMONG ROA AND THE RRGs

77. In addition to providing direct insurance to its subscribers, ROA entered into purported contracts of reinsurance with DIR, TRA, and ANLIR.

78. Effective January 1, 1993, ROA and DIR entered into Agreement of Reinsurance No. A1993, pursuant to which DIR ceded between 90% and 100% of its risk to ROA.

79. Effective January 1, 1993, ROA and ANLIR executed Agreement of Reinsurance No. B 1993, pursuant to which ANLIR ceded between 90% and 100% of its risk to ROA.

80. Effective September 8, 1995, ROA and TRA executed Agreement of Reinsurance No. A1995, pursuant to which TRA ceded between 90% and 100% of its risk to ROA.

81. Soon thereafter, the risk that ROA reinsured for DIR, ANLIR, and TRA was retroceded to Gen Re which, in turn, retroceded to FVR.

82. From its inception, ROA entered into a reinsurance arrangement with Gen Re, whereby ROA ceded to Gen Re a portion of ROA's risk under ROA's insurance policies. After the RRGs were formed, ROA entered into a retrocession arrangement with Gen Re further to transfer the insurance risk of DIR, ANLIR, and TRA that had been ceded by the RRGs to ROA. All of this transfer of risk to Gen Re, including risk ceded to ROA by DIR, ANLIR, and TRA, was encompassed within the reinsurance arrangement with Gen Re.

83. As originally structured and disclosed to regulators, the reinsurance treaties between ROA and Gen Re appeared to have constituted a legal, legitimate business practice. As a result of ROA's reinsurance treaties with Gen Re, ROA received a considerable financial reporting credit that had material favorable impact on its financial statements. After the RRGs entered into reinsurance treaties with ROA, they similarly received a credit that had a material favorable impact upon each of their financial statements.

84. The reinsurance treaties among and between ROA, DIR, ANLIR, TRA, and Gen Re were disclosed to regulators and to the public and were disclosed in Best's Insurance Reports. However, as discussed further below, the Management Defendants did not disclose to regulators or to Best's Insurance Reports, and did not obtain prior written approval from Tennessee or Virginia regulators of, certain "non-contractual understandings," "side letters," and other agreements purporting to modify the reinsurance treaties between the companies and Gen Re, and the Gen Re-FVR Retrocession Agreements. The non-disclosures were fraudulent and, in some cases, violated statutes requiring prior written approval of certain transactions. The non-disclosures were the proximate cause of economic damages to each of the RRGs.

VI. ALLEGATIONS MADE BY COMMISSIONER GROSS

85. At all times before January 31, 2003, TRG maintained and controlled virtually all of the assets of DIR, ANLIR, and TRA. When the companies were put into receivership, the books and records of the RRGs were located in Richmond, Virginia, under the care, custody, and control of the Deputy Receiver for ROA/TRG. Commissioner Flowers, as Receiver for DIR, ANLIR, and TRA, therefore did not and does not have access to documentation that would reflect the full pattern of wrongful conduct alleged herein and in the Complaint filed by Commissioner Gross on behalf of ROA/TRG.

86. Commissioner Gross conducted an investigation that resulted in the filing of his Complaint on behalf of ROA/TRG. In his Complaint, Commissioner Gross alleges a conspiracy among the Defendants, as well as other wrongful acts engaged in by various of the Defendants, all of which resulted in the ultimate financial failure of ROA/TRG. It was the financial failure of ROA/TRG that precipitated the failure of the RRGs.

87. In his Complaint, Commissioner Gross alleges that ROA/TRG had become insolvent well before January 29, 2003. On information and belief, the documents collected by Commissioner Gross demonstrate that the RICO Defendants and others engaged in a complex conspiracy of fraudulent schemes to conceal ROA/TRG's financial deterioration from subscribers, members, insureds, policyholders, creditors, regulators, and the public. As a consequence, the Management Defendants were able to cause ROA/TRG to continue issuing new policies and undertaking additional debt, thereby exacerbating ROA/TRG's financial impairment to the point of, and driving ROA/TRG ever deeper into, insolvency. According to Commissioner Gross, by the time ROA/TRG was placed into receivership, ROA's liabilities exceeded its admitted assets by approximately $200 million. This figure has since been revised

upwards. The substantial majority of these liabilities consists of obligations by ROA to pay claims made against the RRGs by their insureds.

88. Because the RRGs depended on ROA for their financial viability, this harm alleged by Commissioner Gross to have been perpetrated on ROA/TRG was also perpetrated on the RRGs. Damages incurred by the RRGs arose out of the same series of transactions and occurrences by the same parties that caused damage to ROA/TRG.

A. The Conspiratorial Relationship: Rebates paid to ROA

89. On information and belief, Gen Re's reinsurance of ROA through 1990 had been so lucrative that Defendant Crews succeeded in demanding rebate of a portion of Gen Re premiums from prior reinsurance contracts as a condition of renewing or entering into new reinsurance treaties with Gen Re.

90. On December 11, 1991, Crews (in Virginia) used wire communication to send Kellogg (in Connecticut) a draft "comfort" letter (the "1992 Unreported Side Agreement"), as an addition to the ROA-Gen Re Stabilization Treaty. Crews sent the proposed draft to Gen Re so that Gen Re could transfer the letter to Gen Re letterhead, and Kellogg could sign the letter and return it to Crews.

91. On January 6, 1992, Crews (in Virginia) sent another draft of the 1992 Unreported Side Agreement to Kellogg (in Connecticut) through the U.S. Mail.

92. Although the 1992 Unreported Side Agreement purported to be a "legally binding agreement," it stated that it was intended "FOR [CREWS'] EYES ONLY" and was "not to be shared with anyone" at ROA, TRG, or DIR except in Crews' sole discretion. It recited that Gen Re would rebate at least $9.5 million of ceded premiums back to ROA, because such payment was "required to help stabilize the [ROA/Gen Re] relationship." As consideration for "the

continued cession of reinsurance business to [Gen Re] on terms mutually acceptable to [ROA and Gen Re]," Gen Re would rebate an additional $6 million of ceded premiums back to ROA, for a total rebate of $15.5 million from 1991 to 1996.

93. On information and belief, the 1992 Unreported Side Letter Agreement was executed by Gen Re and Crews (on behalf of ROA), and payments were made by Gen Re to ROA pursuant to the Agreement.

94. Commissioner Gross alleges in his Complaint that $3.5 million of those rebates was never deposited in any ROA account. Commissioner Gross further alleges that ROA did not correctly report the rebates received from Gen Re in its financial statements.

95. The 1992 Unreported Side Agreement was the beginning of a long pattern by the RICO Defendants of engaging in unreported transactions in order to evade regulatory scrutiny and maximize benefits to themselves, which ultimately led to injury to the RRGs and their policyholders.

B. Gen Re Loans to FVR Misrepresented as Reinsurance

96. Commissioner Gross alleges in his Complaint that the Management Defendants, with the complicity and cooperation of Reindel at Gen Re, and of Witkowski at Atlantic Security, engaged in a scheme to make loans from Gen Re to FVR, but to disguise and misrepresent those loans as reinsurance. The "reinsurance" agreements were intended to inflate artificially and improperly FVR's surplus for the business originally written by the RRGs, reinsured by ROA, and then retroceded to Gen Re. This is so-called "pass-through" reinsurance. That is, this is the portion of the RRG ceded reinsurance that was ceded from the RRGs to ROA and in turn "passed through" to Gen Re and was in turn retroceded ("passed through" again) to

FVR. The intent of these “reinsurance” agreements was to deceive Gen Re’s regulators regarding FVR’s ability to satisfy its obligations as a reinsurer of Gen Re.

97. On information and belief, the parties also intended that Gen Re would incur no substantial insurance risk of net loss to itself, in that FVR’s obligations under the Gen Re loans would be guaranteed by ROA, and Gen Re’s purported “reinsurance” of ROA for this pass-through business was merely an accommodation. The Management Defendants concealed from regulators ROA’s guaranty of FVR’s obligations to Gen Re, thereby misrepresenting and falsely stating the financial condition of ROA. If the regulators had known the true financial condition of ROA, ROA would not have been permitted to continue to operate and, because of the dependence of the RRGs on ROA, the RRGs also would not have been permitted to operate.

98. The RICO Defendants made use of wire and mail communications in negotiating and implementing the loans from Gen Re to FVR, and the guaranty by ROA.

99. Patterson and Hudgins made false statements on ROA’s Annual Statements for 1998, 1999, 2000, and 2001, asserting that ROA had no material contingent liabilities even though ROA had contingent liabilities to reimburse Gen Re for the sham reinsurance. These false statements were material and were violations by Patterson and Hudgins of 19 U.S.C. § 1033(a)and 1033(c), which violations ultimately led to injury to the RRGs and their policyholders.

C. $10 Million Fraudulently Transferred from ROA to FVR Trusts

100. Commissioner Gross alleges in his Complaint that Seeger, Kellogg, Reindel, Patterson, and Hudgins conspired to make a disguised transfer of $10 million from ROA to the FVR Bermuda Trusts. After the transfer occurred, it was falsely accounted for by ROA as a pre-payment of reinsurance payments to Gen Re.

101. If the payment had not been disguised, the Virginia regulators could have discovered the schemes employing undisclosed rebates and sham reinsurance. If the Virginia regulators had discovered these schemes, they would have discovered that ROA's Surplus to Policyholders had been overstated by over $10 Million on its 2000 Annual Statement.

102. As a result of the overstatement of ROA's Surplus to policyholders, the RRGs' 2000 Annual Statements filed with TDCI also fraudulently overstated Surplus to Policyholders.

103. These false statements regarding the accounting for the $10 million were material and were violations by Patterson and Hudgins of 18 U.S.C. 1033§§ (a) and 1033(c), which ultimately led to injury to the RRGs and their policyholders.

104. Commissioner Gross alleges in his Complaint that, when PwC began to question the $10 million transfer, Patterson, Crews, and Hudgins enlisted the assistance of Seeger and Wachovia in convincing PwC that the transfer should be treated as an ROA asset. PwC thereafter failed to require ROA to non-admit (that is, not to count as an asset) the $10 million "prepaid premiums," even though PwC knew, or should have known, that this was a false entry, and that it had a duty to impose such a requirement upon ROA.

105. Commissioner Gross alleges in his Complaint that the RICO Defendants made use of wire and mail communications in devising and implementing the $10 million transfer from ROA to the FVR Trusts.

D. False Recording of "Assets" on ROA's Financial Statements

106. Commissioner Gross alleges in his Complaint that the Management Defendants had a regular practice of re-characterizing liabilities as "assets" whenever needed to fraudulently boost surplus to policyholders shortly before filing quarterly or annual statements. The purpose of these fraudulent characterizations was to enable the Management Defendants to report ROA's,

DIR's, ANLIR's, and TRA's Surplus to Policyholders as being above the RBC percentage calculated as 200% of Authorized Control Level ("ACL," which is half of the RBC), thereby avoiding enhanced regulatory scrutiny.[2]

107. These false entries were material and constituted violations of 18 U.S.C. §§ 1033(a) and 1033(c), which ultimately led to injury to the RRGs and their policyholders.

E. Arbitrary Reserve Write-Downs

108. Commissioner Gross alleges in his Complaint that the Management Defendants caused DIR and ROA to engage in arbitrary and improper reserve write-downs for loss and loss adjustment expenses, which resulted in the financial statements for DIR and ROA showing artificially high Surplus to Policyholders that in turn overstated the Risk Based Capital ("RBC") percentages. These artificially high RBC percentages had the effect of concealing from the regulators the true financial condition of DIR and ROA. If the regulators had known the true condition of DIR and ROA, the regulators would not have allowed DIR and ROA to continue to operate. If the Virginia authorities had not permitted ROA to continue to operate, the Tennessee regulatory authorities would in addition not have permitted ANLIR and TRA to continue to operate.

109. Commissioner Gross further alleges that the reserve write-downs occurred on several occasions shortly before quarterly and annual financial statements were due to be filed, and were backdated so that the statements for periods already ended would report Total Adjusted Capital in excess of 200% of ACL, the level below which company action would have been

[2] Risk Based Capital ("RBC") is the result of a method that attempts to determine the surplus required to support the business written by an insurance company, given the characteristics of the insurance company's assets. A complex calculation produces an estimate of the required capital. The Authorized Control Level ("ACL") is equal to one-half of this capital or surplus requirement. Actions by the domiciliary insurance department are predicated on the ratio of actual surplus to ACL. If the ratio is above 200%, no action is contemplated. A ratio between 150% and 200% is "company action level," at which the company is required to take corrective action. If the ratio is between 100% and 150%, regulatory action is authorized. If the ratio is less than 100%, regulatory intervention is required.

required. On information and belief, the Management Defendants and the Director and Officer Defendants would instruct claims personnel to reduce large case reserves without any reasonable basis for doing so and without regard to claims case reserving policies. Instead, the amount of the reserve write-downs was outcome-driven by the amount needed to keep Total Adjusted Capital in excess of 200%.

110. Commissioner Gross also alleges that in April 1995, January 1998, December 1998, December 1999, and October 2000, Patterson, Crews, and Kelley directed claims personnel to reduce DIR claims, and in each instance to backdate the reductions for purposes of upcoming DIR Quarterly and Annual Financial Statements to be filed with the TDCI and, because of the reinsurance relationship, for purposes of ROA's Quarterly and Annual Financial Statements to be filed with the Virginia SCC. The total amount of these reserve write-downs was in excess of $6.5 million. The claims write-downs were made without examination of the claims filed by claims adjusters pursuant to established claims review policies and there was therefore no legitimate basis for the claims write-downs. As a result of the claims write-downs, ROA's Surplus to Policyholders was fraudulently overstated by approximately $2.3 million in the March 1995 Quarterly Statement, $2 million in the 1997 Annual Statement, and $300,000 in the 1998 Annual Statement, and $1 million in the September 2000 Quarterly Statement. DIR's Surplus to Policyholders was similarly overstated in the corresponding Quarterly and Annual Statements filed with the TDCI.

111. In addition to the effect of the write-down of DIR reserves on ROA, the write-down also impacted the RBC calculation for DIR. The acknowledged $2.1 million write-down for 2001 was sufficient to put the ratio of policyholder surplus to ACL above 200%, and keep DIR from immediate regulatory scrutiny.

112. Furthermore, on information and belief, in November 2000, January 2001, and November 2001, Patterson, Crews, and Hudgins directed claims personnel to reduce ROA claims, and in each instance to backdate the reductions for purposes of upcoming Quarterly and Annual Financial Statements to be filed with the Virginia SCC. The total amount of these reserve write-downs was in excess of $30 million. The claims write-downs were made without examination of the claims files by claims adjusters pursuant to established claims review policies and there was therefore no legitimate basis for the claims write-downs. As a result of the claims write-downs, ROA's Surplus to Policyholders was fraudulently overstated by approximately $5.4 million in the September 2000 Quarterly Statement, $5.8 million in the 2000 Annual Statement, and $25.8 million in the September 2001 Quarterly Statement.

113. Also, ANLIR and TRA each reported reserve write-downs in their 2001 annual statements. The write-down of reserves also impacted the RBC calculation for ANLIR. The acknowledged $330,000 write-down for 2001 was sufficient to put the ratio of policyholder surplus to ACL above 200% and keep ANLIR from immediate regulatory scrutiny. The reserve write-down for TRA in 2001 was $5 million. While this write-down was substantial and translated into a significant impact on policyholder surplus, the surplus of TRA would have been above the 200% of ACL level even without the write-down.

114. On information and belief, Milliman was aware that DIR and ROA were under-reserved as early as December 1999.

115. Due to the improper reserve write-downs, the annual and quarterly statements filed on behalf of ROA, DIR, and ANLIR were materially false and constituted violations of 18 U.S.C. §§ 1033(a) and 1033(c), which ultimately led to injury to each of the RRGs and their policyholders.

VII. SIDE LETTER AGREEMENTS

A. The 2000 Unreported Side Letter Agreement

116. On information and belief, early in the year 2000, the RICO Defendants became aware that premiums charged under DIR policies in prior years had been inadequate, and/or that losses being experienced were more severe than had been predicted. Gen Re became concerned that the FVR Bermuda Trusts were inadequately funded to cover FVR's obligations to Gen Re under the Gen Re-FVR Retrocession Agreements, and that the extent of Gen Re's insurance risk of net loss was greatly increased. The RICO Defendants conspired, through the use of a fraudulent and unreported side agreement, to limit or eliminate Gen Re's reinsurance risk of loss, while maintaining the illusion that Gen Re continued to bear a substantial insurance risk of net loss under the Gen Re/ROA reinsurance treaties.

117. Reindel, on behalf of Gen Re, therefore proposed a scheme involving an aggregate cap that would limit Gen Re's reinsurance risk of loss under the Gen Re/ROA reinsurance treaties. On information and belief, this scheme was intended to allow ROA to continue claiming a credit for its reinsurance with Gen Re, undiminished by the effect of the cap, which would not be disclosed to regulators.

118. A cap on Gen Re's obligations to ROA had the potential and did in fact diminish the surplus of ROA, which diminished the security for the reinsurance available to the RRGs. It thereby effectively destroyed the reinsurance available to the RRGs, since the RRG reinsurance with ROA had been passed-through to Gen Re.

119. On information and belief, the RICO Defendants hoped that they could yet avoid discovery of the deteriorating financial condition of ROA, and therefore of each of the RRGs, by

evading the enhanced regulatory monitoring that would be triggered if ROA's RBC or the RBC of any RRG fell to a level low enough to require regulatory intervention.

120. On information and belief, by letter dated November 16, 2000, Seeger used mail or wire communication to send what she referred to as "a finalized side-letter agreement" (the "2000 Unreported Side Agreement") from Gen Re's offices in Connecticut to Patterson in Virginia. This communication was copied to Gen Re's Migel and Kellogg.

121. The 2000 Unreported Side Agreement was dated as of November 11, 2000. On information and belief, Gen Re executed the Agreement on December 15, 2000. On December 28, 2000, Patterson and Hudgins, on behalf of ROA, executed the Agreement.

122. Seeger knew as early as 1997 that unreported side agreements were illegal under Virginia law, having received a January 10, 1997, email from a Gen Re employee quoting the relevant statute. Seeger forwarded the email by facsimile to Hudgins on January 28, 1997.

123. Pursuant to the 2000 Unreported Side Agreement, Gen Re's liability for payments made by ROA at and after 12:01 a.m., January 1, 2000, for Net Loss and Adjustment Expense under all Subject Reinsurance Agreements combined, purported to be limited to the sum of $140 million plus 100% of the reinsurance premium ceded by ROA, net of commission, for calendar year 2000 under Agreements of Reinsurance No. A456 and No. A481 (the "$140 Million Cap").

124. For purposes of the 2000 Unreported Side Agreement, the Subject Reinsurance Agreements included reinsurance agreements between ROA and Gen Re for business written by ROA, and also reinsurance agreements between ROA and Gen Re for business written by the RRGs and assumed by ROA under reinsurance agreements with the RRGs.[3]

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[3] The applicable agreements were stated as Agreements of Reinsurance No. A238 between ROA and Gen Re; No. A273 between ROA and Gen Re (applying to business assumed by ROA from DIR under Agreement No. A 1993 between ROA and DIR); No. A289 between ROA and Gen Re (applying to business assumed by ROA from ANLIR under Agreement No. B 1993 between ROA and ANLIR); No. A442 between ROA and Gen Re (applying to

125. On information and belief, neither ROA nor any of the RRGs received any consideration for agreeing to the $140 Million Cap, nor were the independent Directors of the RRGs privy to the arrangement.

126. In ROA's Annual Statement for the Year 2000, which was filed with TDCI on or about March 2001, and relied upon by the Virginia regulators, Patterson and Hudgins (on information and belief with the knowledge and complicity of Gen Re, Crews & Hancock, Crews, and Kelley) answered falsely under oath "No" to the following general interrogatories:

> 15.(a) Has this company reinsured any risk with any other company under a quota share reinsurance contract which includes a provision which would limit the reinsurer's losses below the stated quota share percentage (e.g., a deductible, a loss ratio corridor, a loss ratio cap, an aggregate limit or any similar provision?)
>
> 16.(a) Has this company reinsured any risk with any other company and agreed to release such company from liability, in whole or in part, from any loss that may occur on the risk, or portion thereof, reinsured?

127. Patterson made similar misrepresentations in ROA's subsequent quarterly financial statement and in ROA's 2001 Annual Statement (and amended 2001 Annual Statement).

128. These false statements were material, were intended to deceive, and were violations by Defendants Patterson, and Hudgins of 18 U.S.C. §§ 1033(a) and 1033(c).

129. On information and belief, contemporaneously with their being filed, the Management Defendants mailed a copy of the 2000 Annual Statements of ROA and each of the RRGs to Defendant Gen Re. Defendants Reindel, Seeger, and Kellogg therefore had actual

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business assumed by ROA from TRA under Agreement No. A1995 between ROA and TRA); No. A456 between ROA and Gen Re; and No. A48l between ROA and Gen Re.

knowledge that the Management Defendants had not reported the 2000 Unreported Side Agreement.

130. The 2000 Unreported Side Agreement, like the other schemes and arrangements alleged by Commissioner Gross in his Complaint, evinces the pattern of racketeering activity engaged in by the RICO Defendants for the purpose of evading regulatory scrutiny in furtherance of maximizing benefits to themselves, which ultimately led to injury to the RRGs and their policyholders.

B. The 2002 Unreported Side Agreement

131. On information and belief, in furtherance of their continuing conspiracy, in May of 2001, the RICO Defendants discussed limiting further, through a new fraudulent and unreported side agreement, Gen Re's reinsurance risk of loss under the Gen Re/ROA reinsurance treaties.

132. In October 2001, Seeger, Migel, and Kellogg began proposing various drafts of a side agreement to replace the 2000 Unreported Side Agreement.

133. By wire transmission dated January 4, 2002, Patterson distributed to Kelley, Hudgins, and Crews the final draft of a reinsurance "white paper" that had been sent on January 3, 2002, to members of ROA's Executive Committee. As reflected in the "white paper," the RICO Defendants became increasingly concerned that premiums charged for the physician book of business starting in about 1997 were even more inadequate, and/or that losses being experienced were even more severe, than they had feared in 1999, resulting in FVR having "a minimum amount of surplus." Based on this new information, Gen Re proposed a new fraudulent scheme pursuant to which ROA would enter into several related agreements as part of a step transaction with Gen Re and FVR in and after March of 2002, effective retroactively as of

December 31, 2001, or January 1, 2002, depending on the agreement. Collectively, the agreements comprising the step transaction were referred to as the "Loss Portfolio Transfer."

134. Pursuant to the Loss Portfolio Transfer, FVR commuted to Gen Re all of FVR's liabilities and obligations under the Gen Re-FVR Retrocession Agreements. In exchange for the commutation of liabilities and obligations under the Gen Re-FVR Retrocession Agreements, FVR paid Gen Re a commutation payment of $112,998,000 from the FVR Bermuda Trusts, which was intended to cover Gen Re's potential liability for the commuted risk, attributable to the pre-2002 claims. Gen Re agreed to release to FVR's control another $11 million of assets that had been in the FVR Bermuda Trusts (the "Pre-2002 Trust Balance").

135. As part of the Loss Portfolio Transfer, Gen Re ceased accepting reinsurance from ROA, including the pass-through reinsurance from the RRGs, for the primary layers that it had previously accepted and ceded to FVR. ROA and Gen Re executed Reinsurance Agreement A593, effective December 31, 2001, whereby Gen Re agreed to reinsure ROA for claims made by insureds of DIR, ANLIR, or TRA in 2002 through 2005, if the occurrence giving rise to the claim took place on or before December 31, 2001 (the "Gen Re Tail").

136. On information and belief, on January 11, 2002, Seeger used mail communication to confirm with Patterson the terms of the tentative second side agreement among the RICO Defendants regarding the replacement of the 2000 Unreported Side Agreement. This letter was copied to Migel, Reindel, and Crews.

137. On information and belief, on January 24, 2002, ROA's Senior Vice President Actuarial used wire communication to inform Milliman's Pete Wick and Robert L. Sanders that a "unique loss ratio cap of 130% or greater" would be put in place. This communication was copied to Hudgins and Patterson.

138. On February 19, 2002, Sanders used wire communication to acknowledge to Patterson that Bland had briefed Sanders on the effects of the Loss Portfolio Transfer, and had informed Sanders of the 2000 Unreported Side Agreement and the proposed new side agreement (the "2002 Unreported Side Agreement"). Sanders' wire communication asked Patterson for copies of the side agreements, which Bland provided to Sanders by facsimile transmission dated February 20, 2002.

139. On February 27, 2002, Defendant Sanders issued his statement of Actuarial Opinion for ROA, for the year ended December 31, 2001. At page 3, paragraph 5, Sanders represented:

> My opinion on the loss and loss adjustment expense reserves net of ceded reinsurance assumes that all ceded reinsurance is valid and collectible. The Company has represented to me that it knows of no uncollectible reinsurance cessions. I am not aware of any reinsurance that the Company treated as collectible but should have treated as uncollectible. This does not imply an opinion on the financial conditions of the Company's reinsurers. I have not anticipated any contingent liabilities that could arise if the reinsurers do not meet their obligations to the Company as reflected in the date and other information provided to me.

140. On page 4 of the opinion, Sanders discussed various risk factors, including: "If the Company's reinsurance protection does not respond to adverse reserve deviation, such deviation could materially affect the Company's surplus." He did not mention, however, the proposed 2002 Unreported Side Agreement or its $135 million aggregate cap, of which he had actual knowledge. Defendant Sanders did not, in evaluating net reserves, address the impact of the proposed 2002 Unreported Side Agreement or its $135 million aggregate cap on the ceded reinsurance.

141. Although the 2002 Unreported Side Agreement had not been finalized as of the date of the Statement of Actuarial Opinion signed by Sanders, he had knowledge of its

impending implementation. More importantly, Sanders did not mention the 2000 Unreported Side Agreement and its $140 million cap and attendant impact on reserves as of December 31, 2001. This Agreement was in effect and was known to Sanders and Milliman. Since the 2000 Unreported Side Agreement made material changes to existing reinsurance contracts, Sanders and Milliman should have questioned the accounting treatment of the affected reinsurance contracts. Statement of Statutory Accounting Practices 62 ("SSAP 62," which is a statutory implementation of Financial Accounting Standards 113 ("FAS 113")) requires that reinsurance contracts that undergo material changes be treated as deposit accounting, not the more favorable reinsurance accounting. The implementation of a cap on a contract would be such a material change.

142. Despite knowledge of the 2002 Unreported Side Agreement and its $135 million aggregate cap, Defendants Milliman and Sanders never disclosed these as a material change in the assumptions previously employed by them in providing an opinion on the adequacy of reserves of ROA or the RRGs. Nor did Milliman or Sanders ever determine, or disclose, the additional amount of reserves that would be necessary as a consequence of the 2002 Unreported Side Agreement and its $135 million aggregate cap.

143. On information and belief, on March 6, 2002, Migel used mail communication to send a draft of the 2002 Unreported Side Agreement to Patterson.

144. On information and belief, on or about April 2, 2002, Hudgins and Reindel provided PwC with a list of the Agreements of Reinsurance between ROA and Gen Re, which list mentioned reinsurance agreements entered into, terminated, or commuted effective December 31, 2001, as part of the Loss Portfolio Transfer that was an integral part of the 2002

Unreported Side Agreement, but the list did not mention the 2002 Unreported Side Agreement or its $135 million aggregate cap.

145. The Loss Portfolio Transfer, which was effective as of January 1, 2002, was part of the 2002 Unreported Side Agreement. Pursuant to the Agreement, Gen Re's liability for payments made by ROA, including payments on account of RRG claims, was further limited. Payments for claims incurred, at and after 12:01 a.m., January 1, 2002, purported to be limited to an aggregate cap of $135,000,000. On March 27, 2002, Patterson executed the 2002 Unreported Side Agreement. On April 11, 2002, Gen Re executed the 2002 Unreported Side Agreement.

146. On information and belief, Kelley and Hudgins had knowledge of, and conspired with, Patterson, Crews, and Crews & Hancock with respect to the execution of, the 2002 Unreported Side Agreement.

147. The reinsurance agreements that were the subject of the 2002 Unreported Side Agreement included reinsurance agreements between ROA and Gen Re for business written by ROA, and also reinsurance agreements between ROA and Gen Re for business written by the RRGs and assumed by ROA under reinsurance agreements with the RRGs.[4]

148. On information and belief, by April 30, 2002, PwC had knowledge and copies of the 2002 Unreported Side Agreement (and, therefore, of the 2000 Unreported Side Agreement) and the $135 million aggregate cap. However, PwC's audit report and opinion on ROA's amended statutory basis financial statements for the years ended December 31, 2001, and 2000, dated September 25, 2002, did not mention or account for the 2002 Unreported Side Agreement

[4] The listed agreements were Agreements of Reinsurance No. A238 between ROA and Gen Re, No. A273 between ROA and Gen Re (applying to business assumed by ROA from DIR under Agreement No. A 1993 between ROA and DIR), No. A289 between ROA and Gen Re (applying to business assumed by ROA from ANLIR under Agreement No. B 1993 between ROA and ANLIR), No. A442 between ROA and Gen Re (applying to business assumed by ROA from TRA under Agreement No. A 1995 between ROA and TRA), No. A456 between ROA and Gen Re, and No. A593 between ROA and Gen Re.

or its $135 million aggregate cap, although it mentioned the components of the Loss Portfolio Transfer that the Management Defendants had reported to the Commission.

149. PwC's audit report and opinion on ROA's amended statutory basis financial statements did not opine as to whether the reinsurance accounting treatment of the contracts affected by the Loss Portfolio Transfer was proper. As mentioned earlier, SSAP 62 requires that material changes to reinsurance agreements be accounted for under deposit accounting rules rather than the more favorable reinsurance accounting treatments.

150. The 2002 Unreported Side Agreement and the $135 million cap applied to claims that had occurred by December 31, 2001, and were reported as of that date, as well as to claims on polices in-force on December 31, 2001. This was known as the Gen Re Tail coverage. Two sets of claims are not included in this Gen Re Tail coverage: claims that occur after December 31, 2001, on policies in-force as of December 31, 2001; and new and renewal policies written on or after December 31, 2001, with claims that occurred prior to December 31, 2001, reported after that date.

151. In July 2002, ROA and FVR entered into an agreement that provided purported reinsurance for these claims. As part of the entire Loss Portfolio Transfer process, ROA and FVR executed Agreement of Retrocession No. 2002-1 ("Retrocession Agreement No. 2002-1"), which was effective retroactively to January 1, 2002, pursuant to which FVR reinsured ROA for new and renewal policies written or reinsured by ROA which became effective after 11:59 p.m., December 31, 2001, with respect to:

> (1) claims and losses resulting from Occurrences taking place at and after [11:59 p.m., December 31, 2001]; and
>
> (2) claims first made at and after [11:59 p.m., December 31, 2001] under coverage's written on a claims-made basis but only to the extent such claims are

> not otherwise reinsured under the terms of Agreement of Reinsurance No. A593 between ROA and General Reinsurance Corporation [(i.e., the Gen Re Tail)]

152. Retrocession Agreement No. 2002-1 obligated ROA to pay FVR 100% of the reinsurance premium allocated to the limits reinsured thereunder, net of commission, under "ROA's reinsurance agreements A1993 with DIR, B1993 with ANLIR, and A1995 with TRA." Retrocession Agreement No. 2002-1 obligated FVR to pay ROA 100% of that portion of Net Loss sustained by ROA that were not payable by Gen Re pursuant to Gen Re's reinsurance agreements with ROA. Retrocession Agreement No. 2002-1 would include amounts not payable as the result of the $135 million aggregate cap, as well as claims occurring after December 31, 2001, on the then in-force policies.

153. On a date in 2002 contemporaneous with, or subsequent to execution of, Retrocession Agreement No. 2002-1, Patterson (ostensibly on behalf of ROA), FVR, and Wachovia executed a trust agreement, to secure the performance of FVR's obligations to ROA and the RRGs pursuant to Retrocession Agreement No. 2002-1 (the "Wachovia-FVR Trust Agreement").

154. The initial funding of the trust created by the Wachovia-FVR Trust Agreement (the "Wachovia-FVR Trust") was made on July 11, 2002, in the amount of $6,140,578.20, which, on information and belief, consisted of part of the Pre-2002 Trust Balance of $11 million.

155. The Wachovia-FVR Trust was executed for the purpose of obtaining for ROA the benefit of reinsurance accounting. A reinsurance agreement with a non-admitted, alien (i.e. Bermuda) reinsurer does not qualify for the beneficial reinsurance accounting treatment unless there is a trust fund running to the benefit of the ceding company, funds are withheld by the ceding company to cover the reinsured portion of the risk, or a letter of credit is posted by the

reinsurer. The amount of the credit against current liabilities is limited to the amount of the trust, the amount of funds withheld by the insurer, or the face value of the letter of credit.

156. Reinsurance accounting would permit ROA to reduce certain claims liabilities for reinsurance in the form of a reduction from liability for reinsurance ceded to FVR in an amount not exceeding the maximum of (1) the liabilities carried by ROA (including liabilities for reinsurance obligations to the RRGs) and covered under the reinsurance agreement, or (2) the amount of funds held in the Wachovia-FVR Trust.

157. The Wachovia-FVR Trust existed as security for ROA's obligations to the RRGs, which liabilities passed to FVR under Retrocession Agreement No. 2002-1.

158. Any credit for reinsurance obtained by ROA under Virginia law enables ROA to maintain sufficient surplus to continue to be an admitted reinsurer with respect to the RRGs under Tennessee law.

159. On information and belief, the Wachovia-FVR Trust was always capitalized inadequately to fund FVR's disclosed and undisclosed obligations to ROA, and Defendants Patterson, Hudgins, Crews, Kelley, Gen Re, and FVR had knowledge that the Wachovia-FVR Trust was inadequately capitalized.

160. At the time the 2002 Unreported Side Agreement was executed, the RICO Defendants knew, or should have known, that ROA's Net Loss and Adjustment Expense under all Subject Reinsurance Agreements would far exceed the $135 million aggregate cap on Gen Re's liability as ROA's reinsurer.

161. No later than June of 2002, Defendant Milliman had knowledge that the aggregate liabilities under the publicly disclosed ROA-Gen Re reinsurance treaties exceeded the $135 million aggregate cap on Gen Re's liability established by the 2002 Unreported Side Agreement.

162. ROA's Net Loss and Adjustment Expenses under the business subject to the Loss Portfolio Transfer between Gen Re and FVR alone was already anticipated in March 2002 to be on the order of at least $165 million. Therefore, even without considering the other Subject Reinsurance Agreements, ROA's reported insurance recoverable from Gen Re would likely be impaired by at least $30 million, and ROA's March 2002 Quarterly Statement overstated ROA's surplus to policyholders by at least $30 million.

163. If the full impact of the Loss Portfolio Transfer had been recognized by ROA in its quarterly financial statements filed with the SCC, the resulting decrease in policyholder surplus would have indicated that the SCC act sooner to take regulatory action regarding ROA. Therefore, this overstatement of credit for reinsurance and the concomitant overstatement of ROA policyholder surplus translated into overstatements on the RRGs' March, June, and September 2002 Quarterly Statements filed with the TDCI and signed by and attested to by certain of the Management Defendants.

164. Under Virginia law, the SCC's prior written approval of the 2002 Unreported Side Agreement was required if, as of the date the 2002 Unreported Side Agreement was executed, the resulting change in ROA's liabilities was anticipated to equal or exceed 50% of ROA's surplus to policyholders as of the immediately preceding December 31.

165. Disclosure of the 2002 Unreported Side Agreement to the TDCI would have prompted immediate regulatory investigation.

166. As of December 31, 2001, as reported in ROA's 2001 Annual Statement, signed February 27, 2002, 50% of ROA's reported surplus to policyholders equaled $41,118,168.50. However, as discussed above, ROA's reported surplus to policyholders as of December 31, 2001, was inflated by at least $22.9 million (as a result of $2.5 million in false assets and $20.4

million of arbitrary reserves write-downs). Fifty percent of ROA's reported surplus to policyholders as of December 31, 2001, did not exceed $30 million (*i.e.*, $41.1 million less 50% of the $22.9 million surplus to policyholders inflation). In fact, as reported in ROA's Amended 2001 Annual Statement, signed September 6, 2002 (after the Virginia SCC required ROA to re-file its annual statement due to irregularities), 50% of ROA's reported surplus to policyholders as of December 31, 2001, equaled $18,789,402.50.

167. On information and belief, the Management Defendants knew, or should have known, as of the date on which the 2002 Unreported Side Agreement was executed, that the change in ROA's liabilities anticipated to result from the 2002 Unreported Side Agreement exceeded 50% of ROA's surplus to policyholders as of the immediately preceding December 31.

168. There is additional evidence that the RICO Defendants anticipated that the change in ROA's liabilities anticipated to result from the 2002 Unreported Side Agreement would exceed 50% of ROA's surplus to policyholders as of the immediately preceding December 31. A February 20, 2002, internal Crews & Hancock memorandum addressed to Bland referred to the "contemplated $50 million loss portfolio transfer between ROA and a reinsurer."

169. The 2002 Unreported Side Agreement was entered into without the prior written consent of the SCC or TDCI. Neither the Management Defendants, Milliman, nor PwC reported the 2002 Unreported Side Agreement to the SCC or the TDCI.

170. In ROA's Annual Statement for the Year 2001, which was filed with the SCC on or about March of 2002, Patterson and Hudgins (on information and belief with the knowledge and complicity of Gen Re, Crews & Hancock, Crews, and Kelley) answered falsely under oath "No" to the following general interrogatories on February 27, 2002:

> 6.1 Has this reporting entity reinsured any risk with any other entity under a quota share reinsurance contract which includes a

> provision which would limit the reinsurer's losses below the stated quota share percentage (e.g., a deductible, a loss ratio corridor, a loss ratio cap, an aggregate limit or any similar provision)?
>
> 7.1 Has this reporting entity reinsured any risk with any other entity and agreed to release such entity from liability, in whole or in part, from any loss that may occur on the risk, or portion thereof, reinsured?

171. Also, on the first page of ROA's 2001 Annual Statement, Patterson and Hudgins (on information and belief with the knowledge and complicity of Gen Re, Crews & Hancock, Crews, and Kelley) represented falsely under oath that:

> . . . this annual statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to are a full and true statement of all the assets and liabilities and of the condition and affairs of the said insurer as of the thirty-first day of December, 2001, and of its income and deductions therefrom for the year ended on that date, and have been completed in accordance with the NAIC annual statement instructions and accounting practices and procedures manuals except to the extent that: (1) state law may differ; or (2) the state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge and belief, respectively.

172. These false statements were material, were intended to deceive, and were violations by Defendants Patterson and Hudgins of 18 U.S.C. §§ 1033(a) and 1033(c), which ultimately led to injury to the RRGs and their policyholders.

173. Neither ROA nor any of the RRGs received any consideration for entering into the 2002 Unreported Side Agreement.

VIII. MISAPPROPRIATION OF TRUST FUNDS

174. As referenced above, in conjunction with the Loss Portfolio Transfer, an FVR trust fund was to be established that would be dedicated to addressing claims of RRG insureds.

175. The initial source of funding of the trust was to be an approximate $11 million that came from liquidating previously existing FVR trusts, but that was kept by Gen Re as part of the Loss Portfolio Transfer transaction.

176. Upon information and belief, the approximate $11 million initial deposit did not occur. Rather, approximately $6 million was placed in the FVR trust that was dedicated to addressing claims of RRG insureds.

177. Premium dollars paid by the insureds of the RRGs were deposited into the FVR Trust, which was held at Wachovia Bank.

178. Numerous actions by Defendants Crews and Patterson caused millions of dollars to be withdrawn from the FVR Trust for purposes that were not for the payment of claims of RRG insureds.

179. For instance, in or around September 2002, Crews and/or Patterson orchestrated, directed, or were involved in the wrongful transfer of approximately $1.2 million from the FVR Trust for use in paying Wachovia on a debt owed by ROA/TRG to Wachovia.

180. Also in September 2002, Crews and/or Patterson orchestrated, directed, or were involved in the transfer of $3 million from a DIR letter of credit to another FVR account, which then was used to pay Wachovia amounts owed to it by ROA/TRG.

181. These transfers, and others that further investigation will reveal, were made with the knowledge and/or active assistance and/or negligent acquiescence of Defendant Atlantic Securities, Witkowski, Hudgins, Crews, Patterson and/or Wachovia.

182. In addition, Defendants Crews and/or Patterson withdrew or orchestrated the withdrawal of FVR Trust funds for purposes other than those for which the trust was created,

including payment of personal expenses and the expenses or debt of entities other than the RRGs.

IX. DAMAGES RESULTING FROM THE SCHEMES

183. As a result of the schemes devised and implemented by the RICO Defendants and others, ROA and, because of their dependent relationship on ROA, each of the RRGs, were damaged by the misappropriation of funds and by the misrepresentations to regulators, which allowed the companies to continue to operate and incur ever increasing liabilities.

184. The Management Defendants had a statutory duty on behalf of the RRGs to comply with the insurance laws establishing minimum surplus to policyholders in order to ensure their financial viability and their ability to pay insurance claims.

185. The RRGs and the TDCI reviewed Defendant PwC's audit reports, Defendant Milliman's actuarial opinions, reinsurance contracts entered into between the RRGs and ROA, and the retrocession agreements entered into by ROA, the RRGs' quarterly and annual financial statements prepared by the Management Defendants, and the RRGs' annual RBC reports.

186. The RRGs and TDCI relied on Defendant PwC's unqualified audit opinions, Defendant Milliman's actuarial opinions, the alleged completeness of the contracts of reinsurance between the RRGs and ROA, and between ROA and Gen Re, the RRGs' financial statements prepared by the Management Defendants, and the RRGs' RBC reports, to accept that the RRGs' financial statements fairly presented their financial position and that the RRGs maintained not less than the minimum required surplus to policyholders.

187. Because the financial statements of the RRGs and ROA showed each company to be solvent, and because each company's RBC report indicated that each company maintained not

less than the minimum required surplus to policyholders, the RRGs continued, and the TDCI allowed them to continue, issuing new policies and taking on new debts.

188. It is now known that the financial statements and RBC reports of ROA and the RRGs materially misrepresented their true financial condition, and surplus to policyholders.

189. According to the Complaint filed by Commissioner Gross, ROA's surplus to policyholders was inflated by the schemes detailed in his Complaint, by <u>at least</u> $5,441,500 as of September 30, 2000 (as a result of the arbitrary write-down of reserves); by <u>at least</u> $19,275,993 as of December 31, 2000 (as a result of the $10 million "pre-paid premiums," $3.5 million in false "assets," and the arbitrary write-down of reserves by $5,775,993); by <u>at least</u> $32.8 million as of September 30, 2001 (as a result of the $25.8 million arbitrary reserves write- down and $7 million in false "assets"); by <u>at least</u> $22.9 million as of December 31, 2001 (as a result of $2.5 million in false "assets" and $20.4 million in arbitrary reserves write-downs), not to mention the as-yet undetermined effect of the 2000 Unreported Side Agreement; by <u>at least</u> $30 million as of March 31, 2002 (as a result of the 2002 Unreported Side Agreement); and by <u>at least</u> $42.5 million as of September 30, 2002 (as a result of the 2002 Unreported Side Agreement and Reinsurance Agreement No. 9016).

190. As a result of the inflated surplus to policyholders reported by ROA, ROA was able to continue as a purported authorized reinsurer for the RRGs. This deflected regulatory scrutiny by the TDCI, which ultimately led to injury to the RRGs and their policyholders.

191. According to the Complaint filed by Commissioner Gross, PwC opined in its September 25, 2002, report to the Board of Directors of ROA, that ROA's 2001 statutory basis financial statements were materially misstated and that, adjusted for the misstatements, ROA's surplus to policyholders was only $37,578,807, which was below the RBC calculated Authorized

Control Level. This triggered additional regulatory corrective action by the Virginia SCC. But even this low surplus to policyholders did not factor in the effect of the 2002 Unreported Side Agreement, with its $135 million aggregate cap. Note 3 to ROA's amended 2001 statutory basis financial statements made the following representation:

> At December 31, 2001, [ROA] had unsecured reinsurance recoverables of $337,166,000 from [Gen Re]. [Gen Re] is rated A++ Superior by A. M. Best Company, an insurance rating service.

In note 13 ("Subsequent Events") to ROA's amended 2001 statutory basis financial statements, only certain of the related transactions comprising the Loss Portfolio Transfer were reported. Remarkably, note 13 made no mention of the 2002 Unreported Side Agreement or its $135 million aggregate cap. This omission was materially misleading and made either negligently or fraudulently.

200. In late December of 2002, after having learned of the 2002 Unreported Side Agreement with its $135 million aggregate cap, and other financial irregularities, the SCC made a preliminary estimate of ROA's surplus to policyholders and RBC. ROA's Statement of Operations for the Month Ended October 31, 2002, reported ROA's surplus to policyholders to be $46,742,461. However, after adjusting for sham Reinsurance Agreement No. 9016, a $5 million deficit in the Wachovia-FVR Trust, an estimated $50 million in liabilities in excess of the $135 million aggregate cap, and other irregularities, the SCC estimated ROA's surplus to policyholders to be only $3,664,982, or 10% of ACL. This was a Mandatory Regulatory Control Event.

201. When the SCC discovered that ROA was in a hazardous financial condition in late December of 2002, ROA was allowed an opportunity to raise additional capital. When that effort failed, the SCC made preparations to place ROA in receivership. With ROA in

receivership, it became clear that payment by ROA of the obligations owed to the RRGs was impaired, and Commissioner Flowers placed the RRGs into receivership.

202. Had Defendant PwC's audit reports, Defendant Milliman's actuarial opinions, the financial statements of ROA and the RRGs, the RBC reports of ROA and the RRGs been complete and accurate, ROA and the RRGs could have been prohibited much sooner from incurring additional liabilities that they are now unable satisfy.

203. As a proximate result of a pattern of racketeering activity, consisting of the use of fraudulent schemes, multiple instances of mail fraud and wire fraud, undisclosed insurance rebates and aggregate "caps" on reinsurance (at least some of which required the prior written approval of regulators, from whom the caps were concealed), sham reinsurance agreements involving no substantial transfer of insurance risk, arbitrary reserve write-downs, and fraudulent financial transactions and reports, the RICO Defendants were able to avoid or minimize regulatory scrutiny, conceal the true financial condition of ROA and the RRGs, conceal the financial difficulties of ROA and the RRGs that eventually developed and of which they became aware, and conceal the inadequacy of surplus to policyholders. This pattern of racketeering activity enabled the RICO Defendants to maximize benefits to themselves from the interstate commerce engaged in by and among ROA, the RRGs, Gen Re, and FVR. Meanwhile, however, this pattern of racketeering activity proximately caused ROA and the RRGs to incur additional liabilities which they are now unable to pay in full, resulting in injury to the RRGs and, derivatively, to their policyholders and creditors.

204. The subscriber/insureds of the RRGs were also damaged in that they continued to rely on the RRGs to provide them with viable insurance.

205. For example, the Tennessee Bar Association endorsed ANLIR to its membership. This recommendation was made upon a review of the ANLIR insurance rating, which was procured through ANLIR's relationship with ROA, TRG, and Gen Re. Thousands of licensed attorneys in Tennessee (as in other states where ANLIR was endorsed by state or local bar associations) chose ANLIR as their legal malpractice carrier based on the recommendation by the Tennessee Bar Association.

206. In the summer of 2002, members of the Professional Liability Committee of the Tennessee Bar Association began to question the continued advisability of endorsing ANLIR. In a series of meetings, Sanders and certain of the Management Defendants assured the Committee that ANLIR remained actuarially sound, thereby inducing the Committee to recommend that the Tennessee Bar Association continue to endorse ANLIR. These assurances were made by Sanders and the Management Defendants in spite of their knowledge that the Loss Portfolio Transfer and the 2002 Unreported Side Agreement had left ROA, ANLIR's reinsurer, financially impaired.

207. These misrepresentations to the Tennessee Bar Association were` made negligently and/or fraudulently, with the intent to deceive policyholders of ANLIR.

X. THE DEFENDANTS VIOLATED AND CONSPIRED TO VIOLATE 18 U.S.C. §1962(c) THROUGH A PATTERN OF RACETEERING ACTIVITY, RESULTING IN INJURY TO EACH OF THE RRGs

208. On information and belief, beginning at least as early as 1991, or shortly after Gen Re began acting as a pass-through intermediate reinsurer between the ROA and FVR, the Management Defendants, together with Gen Re, Seeger, Kellogg, Reindel, Migel, Crews & Hancock, Witkowski, Atlantic Security, Milliman, Sanders, and Bland conducted or participated (directly or indirectly) in the conduct of the affairs of an association-in-fact enterprise (the

“Association-in-Fact Enterprise”) through a pattern of racketeering activity, or conspired to do so.

209. The Association-in-Fact Enterprise had an identifiable organizational structure. In essence, the Association-in-Fact Enterprise consisted of an informal “de facto” partnership among the RICO Defendants. On information and belief, although all of the RICO Defendants participated in decision-making for the Association-in-Fact Enterprise, Crews and Kellogg were among the most influential, and others looked to them for leadership.

210. The Association-in-Fact Enterprise had ongoing mechanisms for directing its affairs on an ongoing basis. The Association-in-Fact Enterprise made regular use of wire and mail communications among its participants for directing its affairs. In addition, the RICO Defendants convened for summer meetings on a regularly scheduled basis.

211. The Association-in-Fact Enterprise was engaged in interstate commerce.

212. Alternatively, on information and belief, beginning at least as early as 1991, the RICO Defendants conducted, or participated (directly or indirectly) in the conduct of, the affairs of ROA, TRG, and later DIR, ANLIR, and TRA (the “Reciprocal RICO Enterprise”) through a pattern of racketeering activity, or conspired to do so.

213. The Reciprocal RICO Enterprise was engaged in interstate commerce.

214. Specifically, the pattern of racketeering activity consisted of the use of fraudulent schemes, including multiple instances of mail fraud and wire fraud, involving certain undisclosed insurance rebates and aggregate “caps” on reinsurance (at least some of which required the prior written approval of regulators), sham reinsurance agreements involving no substantial transfer of risk, arbitrary reserve write-downs, fraudulent financial transactions and reports, and fraudulent abuse of a regulated trust fund, among other fraudulent practices.

215. On information and belief, the RICO Defendants shared the purposes of, *inter alia*, avoiding and minimizing regulatory scrutiny, concealing the true financial condition of ROA and the RRGs, concealing the financial difficulties of ROA and the RRGs that eventually developed and of which the RICO Defendants became aware, concealing the inadequacy of the surplus to policyholders of ROA and the RRGs, and, ultimately, concealing the insolvency of ROA and the RRGs, all in order that the RICO Defendants might maximize benefits resulting from the interstate commerce engaged in, by, and among ROA, the RRGs, Gen Re, and FVR. Depending upon the RICO Defendant, such benefits took the form of salaries, perquisites, or contractual remuneration, or favor curried with management of the employers of some of the RICO Defendants due to their roles in maximizing profits for their respective employers. On information and belief, the criminal acts engaged in by the RICO Defendants were committed in furtherance of their common purposes.

216. On information and belief, the criminal acts of the RICO Defendants were continuous over a substantial period of time starting as early as 1991 and were open-ended, in that those criminal acts would have extended into the future had they not been detected by the regulators, who put an end to the racketeering activity by placing ROA and the RRGs in receivership. In addition, the RICO Defendants' criminal acts posed a special threat to society. The RICO Defendants' criminal acts had multiple similar victims, in that by way of repeated financial injuries to all the companies they caused derivative injury to policyholders and creditors, resulting in an availability and affordability crisis of hospital liability, physician liability, and attorney liability coverage in numerous states.

217. The RICO Defendants' criminal acts had the actual result of misrepresenting and concealing the true financial condition of ROA and the RRGs, thereby postponing the initiation

of delinquency proceedings and enabling the RICO Defendants to prolong their receipt of salaries, perquisites, or contractual remuneration, or to curry favor with management at the RICO Defendants' respective employers. During this time, ROA and the RRGs amassed increased liabilities, so that by the time the companies were placed in receivership, each was deeply and hopelessly insolvent.

218. The criminal acts described herein had the same or similar participants, in that all of the RICO Defendants were involved in the pattern of racketeering activity, even if each and every RICO Defendant did not play a direct role in each and every criminal act and fraudulent scheme.

219. On information and belief, contractual remuneration received by Defendant Gen Re included millions of dollars in profits and fees on reinsurance agreements with ROA, including agreements for the pass-through of ROA's reinsurance of the RRGs.

220. On information and belief, remuneration received by Defendant Milliman from ROA and the RRGs was in excess of $1 million over a period of five years.

221. On information and belief, remuneration received by Defendant Crews & Hancock exceeded $63 million in legal fees over the years, a portion of which inured to Defendants Crews and Bland as members of Crews & Hancock.

222. On information and belief, remuneration received by Defendant Patterson in 2002 alone exceeded $370,000.

223. On information and belief, remuneration received by Defendant Hudgins in 2002 alone exceeded $250,000.

224. On information and belief, remuneration received by Defendant Kelley in 2002 alone exceeded $200,000.

225. Perquisites received by Defendants Crews, Patterson, Kelley, Bland, Witkowski, and on information and belief, Hudgins, included expense-paid “business trips” to vacation resorts including the Blackberry Farms in Tennessee, the Southampton Princess Hotel in Southampton, Bermuda, and, as recently as December of 2002, the Westin Casuarina Resort in Grand Cayman, Cayman Islands.

XI. EXCESSIVE BILLING BY DEFENDANT CREWS & HANCOCK

226. On information and belief, Defendant Crews & Hancock billed ROA/TRG and the RRGs for legal services that should have been provided pursuant to annual retainers for legal services paid by the companies. Crews & Hancock’s billing for such services was both a breach of contract and a breach of fiduciary duty, and resulted in injury to the RRGs in the amount of such excess billing.

227. Crews, Bland, and Crews & Hancock simultaneously represented ROA, TRG, DIR, ANLIR, TRA, and FVR as general counsel and in numerous specific transactions in which the companies had clear conflicts of interest, including, but not limited to, reinsurance treaties entered into between ROA and each of the RRGs. Such simultaneous representation constituted malpractice by Crews, Bland, and Crews& Hancock, proximately resulting in injury to the RRGs, whose independent interests were not protected.

COUNT I

VIOLATION OF 18 U.S.C. § 1961 et seq. “RICO”

228. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if set out here in full.

229. The RICO Defendants named herein constitute an “enterprise” pursuant to 18. U.S.C. § 1961(4) and/or 18 U.S.C. § 1962(c).

230. Upon information and belief the RICO Defendants associated with and through the enterprise to engage in tortious conduct by directing, participating with and managing the enterprise in a pattern of racketeering activity.

231. Upon information and belief the enterprise described herein was engaged in interstate commerce in implementing and directing its racketeering activity.

232. Upon information and belief the Defendants' racketeering activity included multiple violations of 18 U.S.C. § 1843 and 18 U.S.C. § 1344.

233. Upon information and belief racketeering activities of the Defendants in furtherance of the enterprise included among other things the conduct and activities heretofore described in this Complaint.

234. The RRGs, the TDCI, and the insureds of the RRGs justifiably and reasonably relied to their detriment on the material misrepresentations and omissions by the RICO Defendants.

235. The RICO Defendants named here further entered into a conspiracy in violation of 18 U.S.C. § 1962(d).

236. As a proximate result of the conduct of the RICO Defendants, the RRGs and their insureds suffered damages that are continuing in nature and have not yet been fully ascertained.

Wherefore the premises considered, Plaintiff hereby demands compensatory and punitive damages in an amount to be proven at trial, treble damages, and attorneys' fees plus interest and costs.

COUNT II

FRAUD

237. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

238. As previously described herein, the Defendants made multiple materially false misrepresentations to the RRGs, the TDCI, and the subscriber/insureds of the RRGs upon which they justifiably and reasonably relied to their detriment.

239. Said representations were made with the knowledge and intent that they would be relied upon, and/or the representations were made negligently and/or wantonly and/or willfully and/or recklessly and/or intentionally.

240. As a proximate result of the fraud committed by the Defendants, the RRGs were caused to suffer damages that are continuing in nature and as yet have not been fully ascertained.

241. The conduct of the Defendants was willful and/or wanton and/or reckless and/or intentional such as that the imposition of punitive damages is justified and warranted.

Wherefore the premises considered, Plaintiff hereby demands compensatory and punitive damages from the Defendants, jointly and severally in an amount to be determined at trial, plus interest and costs.

COUNT III

CONSPIRACY

242. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

243. The Defendants actively and deliberately conspired with one another to engage in and accomplish the acts described herein that have proximately resulted in damages to the RRGs and the subscriber/insureds of the RRGs.

244. The conspiracy by the Defendants included, but was not limited to, a conspiracy to violate T.C.A. § 56-45-104(h)(2), which prohibits a risk retention group that is in a hazardous financial condition, or that is financially impaired, from soliciting or selling insurance.

245. In addition, the conduct of the Defendants demonstrates a willful entering into a conspiracy the object of which was the violation of numerous statutory provisions that regulate the business of insurance within the State of Tennessee.

246. The conduct of the Defendants was willful and/or wanton and/or reckless and/or intentional such as that the imposition of punitive damages is justified and warranted.

Wherefore the premises considered, Plaintiff hereby demands compensatory and punitive damages from the Defendants, jointly and severally in an amount to be determined at trial, plus interest and costs.

COUNT IV

UNJUST ENRICHMENT

247. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

248. From the acts, events and circumstances described herein, the Defendants have been individually and collectively enriched in an unjust manner.

Wherefore the premises considered, Plaintiff hereby demands compensatory and punitive damages from the Defendants, jointly and severally in an amount to be determined at trial, plus interest and costs.

COUNT V

NEGLIGENCE AGAINST PRICEWATERHOUSECOOPERS

249. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

250. Upon information and belief, PricewaterhouseCoopers and Stephani negligently and wantonly failed to provide appropriate competent accounting and auditing services.

251. PricewaterhouseCoopers failed to comply with generally accepted accounting standards and negligently caused or allowed the RRGs' true financial condition to remain hidden from regulators, insureds, and others.

252. As a proximate result of the negligence of PricewaterhouseCoopers, the RRGs suffered damages that are continuing in nature and have not yet been fully ascertained.

Wherefore the premises considered, Plaintiff hereby demands compensatory and punitive damages from PricewaterhouseCoopers in an amount to be determined at trial, plus interest and costs.

COUNT VI

NEGLIGENCE AGAINST MILLIMAN USA AND SANDERS

253. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

254. Milliman and Sanders negligently failed to provide appropriate competent actuarial consulting services to the RRGs.

255. The negligent conduct of Milliman and Sanders caused or allowed the RRGs' true financial condition to remain hidden from regulators, insureds and others.

256. As a proximate result of the negligence of Milliman and Sanders, the RRGs were caused to suffer damages that are continuing in nature and have not yet been fully ascertained.

Wherefore the premises considered, Plaintiff hereby demands compensatory and punitive damages from Milliman and Sanders, jointly and severally in an amount to be determined at trial.

COUNT VII

NEGLIGENCE AGAINST

CREWS, BLAND, AND CREWS & HANCOCK

257. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

258. Crews, Bland, and Crews & Hancock had and assumed a duty to provide the RRGs with appropriate, competent and professional legal services.

259. Crews, Bland, and Crews & Hancock negligently breached their duties owed to the RRGs.

260. The negligent breach of duties by Crews, Bland, and Crews & Hancock proximately resulted in damages to the RRGs that are continuing in nature and have not yet been fully ascertained.

Wherefore the premises considered, Plaintiff hereby demands compensatory and punitive damages from Crews, Bland, and Crews & Hancock, jointly and severally in an amount to be determined at trial, plus interest and costs.

COUNT VIII

BREACH OF FIDUCIARY DUTIES

261. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

262. Each of the Management Defendants and the Director and Officer Defendants owed fiduciary duties to the RRGs, including but not limited to the duties set forth in T.CA. § 48-11-101 *et. seq.* These Defendants breached their fiduciary duties to the RRGs thereby proximately causing damages to the RRGs. Alternatively, the Defendants were aware of the fiduciary obligations owed to the RRGs and assisted in conduct constituting a breach of those fiduciary duties by others such that all Defendants are liable to the RRGs.

263. The conduct of the Defendants described herein was so willful, wanton, reckless or intentional as to justify and warrant the imposition of punitive damages.

Wherefore the premises considered, Plaintiff hereby demands compensatory and punitive damages from the Defendants, jointly and severally in an amount to be determined at trial.

COUNT IX

FRAUDULENT TRANSFERS AND PREFERENCES

264. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

265. Upon information and belief, the conduct by the Defendants is in violation of TCA §§ 56-9-315 and 56-9-317.

266. As a proximate result of these violations, the RRGs were caused to suffer damages that are continuing in nature and have not been fully ascertained.

WHEREFORE, Plaintiff hereby demands compensatory and punitive damages from the Defendants, jointly and severally, in an amount to be determined at trial, plus any and all available statutory remedies, both legal and equitable, and interest and costs.

COUNT X

MISAPPROPRIATION AND/OR NEGLIGENT MISHANDLING OF TRUST FUNDS

267. Plaintiff hereby adopts and incorporates herein by reference all prior paragraphs of this Complaint as if set out here in full.

268. Defendants Crews and Patterson, with the knowledge and/or active assistance and/or negligent acquiescence of Defendants Atlantic Securities, Witkowski, Hudgins, and/or Wachovia, misappropriated and/ or negligently mishandled trust funds being held by FVR for the benefit of the RRGs.

269. As a proximate result of these violations, the RRGs were caused to suffer damages that are continuing in nature and have not been fully ascertained.

WHEREFORE, Plaintiff hereby demands compensatory and punitive damages from the Defendants, jointly and severally, in an amount to be determined at trial, plus any and all available statutory remedies, both legal and equitable, and interest and costs.

COUNT XI

MALPRACTICE

270. Plaintiff herein adopts and incorporates by reference all prior paragraphs of this Complaint as set out here in full.

271. Crews & Hancock, Bland, and Crews represented each of the RRGs, ROA, FVR, and TRG as attorneys.

272. PricewaterhouseCoopers LLP and Gary Stefani represented each of the RRGS, ROA, and TRG as accountants**.**

273. Milliman USA Inc. and Robert L. Sanders represented each of the RRGS, ROA, and TRG as actuaries**.**

274. These Defendants gave legal, accounting, and actuarial advice and performed professional services for the RRGs, FVR, ROA, and TRG simultaneously. Each of them, and their partners and members, knew or should have known of the actual and/or potential conflicts existing in their representation of these entities.

275. All of these defendants owed a duty to the RRGs.

276. All of these defendants breached the duty that they owed to the RRGs.

277. The RRGs and their subscriber/insureds suffered damages due to the breaches of duty by Defendants Crews & Hancock, Bland, Crews, PricewaterhouseCoopers LLP, Gary Stefani, Milliman USA Inc., and Robert L. Sanders.

278. The breaches of duty by Defendants Crews & Hancock, Bland, Crews, PricewaterhouseCoopers LLP, Gary Stefani, Milliman USA Inc., and Robert L. Sanders were the cause-in-fact of the damages to the RRGs and their subscriber/insureds.

279. The negligence of Defendants Crews & Hancock, Bland, Crews, PricewaterhouseCoopers LLP, Gary Stefani, Milliman USA Inc., and Robert L. Sanders was the proximate, or legal, cause of the damages to the RRGs and their subscriber/insureds.

WHEREFORE, Plaintiff demands compensatory and punitive damages from these Defendants, jointly and severally, in an amount to be determined at trial, plus any and all available statutory remedies, both legal and equitable, and interest and costs.

Respectfully Submitted,

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W. DANIEL "DEE" MILES, III, *pro hac vice* (MIL060)

JOSEPH H. "JAY" AUGHTMAN, *pro hac vice* (AUG001)

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JURY DEMAND

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY ON ALL ISSUES

OF COUNSEL